

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4539 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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HARESHBHAI GOVINDBHAI MAKWANA THRO' BROTHER AG MAKWANA

Versus

DISTRICT MAGISTRATE

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Appearance:

MR BG JANI for Petitioner

Mr. K.T. Dave, A.G.P. for Respondent No. 2 & 4

Ms. Parinda J. Davawala, for Respondent No. 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Bharat G. Jani for the petitioner, learned A.G.P. Mr. K.T. Dave for the respondents nos.2 and 4 and Ms. Parinda J. Davawala for the respondent no.3.

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality, validity and propriety of the detention order

dated 13-5-1999 passed by the District Magistrate, Rajkot in exercise of powers conferred under Section 3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980( "PBM Act" or short).

2. The petitioner has been running a fair price shop at Jetpur Town, District Rajkot under a valid licence and was receiving quota of essential articles. That the Dy. Director, Civil Supplies raided the said shop on 12-2-1999 and during the enquiry found several irregularities in maintaining books of account as prescribed. It was alleged against the petitioner that he has failed to maintain the stock register in respect of grains and kerosene despite receipt and disposed of the same by taking higher charges and thereby has earned undue profit from the same. That several card holders have given statement that they have not received the kerosene from the shop of the petitioner, however bills have been issued in the name of such persons. It is alleged that the petitioner has charged more than the stipulated rate for distribution of kerosene to the card-holders who are below poverty line.

3. The District Magistrate on the material of audit supplied to him by the Dy. Director, Civil Supplies have come to the conclusion that the petitioner has committed an offence under Section 7 of the Essential Commodities Act, 1955 and that resort to penal provisions stipulated therein are insufficient to prevent the petitioner from indulging into his prejudicial activity adversely affecting the supply or distribution of essential commodities. Hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been submitted that the petitioner has addressed a representation dated 20th May, 1999 to District Magistrate, Rajkot through his Advocate and has requested him to forward the same to the concerned authority of State Government as well as Central Government. That the District Magistrate, Rajkot vide his communication dated 6th June, 1999 rejected the said representation. Not only that but the District Magistrate also informed the petitioner that as the representation is sent through his Advocate, the petitioner should arrange to send the same directly to the Central Government. The petitioner has amended the petition on 13-8-1999 and has raised a specific plea that the District Magistrate, Rajkot-the detaining authority having become functus officio has no jurisdiction to consider the representation of the petitioner and was required to forward the same to the State Government as

well as to the Central Government according to the request made by the petitioner. Failure of forwarding the said representation to the concerned authority has violated the fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution and as such the continued detention of the petitioner has become illegal. That in order to support the submission reliance has been placed on the observations made by this Court in the matter of STATE OF GUJARAT & ORS. VS. HEMANTKUMAR DINKARRAI DESAI & ANR.( 1996 (2) G.L.H.. 277) and in the matter of AMIR SHAD KHAN & ANR. VS. L. HMINGLIANA & ORS. (AIR 1991 SC 1983).

Mr. K.T. Dave, learned A.G.P. has referred to and relied on the affidavit filed by one Mr. P.V. Trivedi -the District Magistrate, Rajkot dated 13th August, 1999 and additional affidavit filed by Mr. P.R. Shukla, Dy. Secretary, Food and Civil Supplies Department dated 6th August, 1999 while Ms. Davawala has referred to and relied on the affidavit filed by the Under Secretary to the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi dated 13th August, 1999 to repel the contention that there was no delay in considering the representation made by the petitioner. It may be noted that as per the scheme of the Act envisaged under " PBM" the officer appointed under Section 3(2) thereof has to forward forthwith the report to State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter. Furthermore, under Section 8, time limit is stipulated for making the order and approval of the same by the authorities. The preventive detention under the Act is also governed by the safeguard provided under Article 22(5) of the Constitution whereby every detainee has a right to make representation to appropriate authority and the authority is duty bound to construe the same as soon as possible. That breach of said imperative renders the action of the authority invalid.

In the instant case, it is not in dispute that the representation made by the petitioner through his Advocate, copy of which is produced on record dated 20th May, 19997 was received by the District Magistrate, Rajkot who is an officer appointed under Section 3(2) of the Act. That on the date on which the representation was received the order having been approved on the opinion of the Advisory Board by the State Government, the District Magistrate as detaining authority had no jurisdiction to decide the said representation and he was

obliged to forward the same for due consideration to the Central Government. Article 22(5) casts further obligation on the detaining authority to forward the said representation to the concerned department of Central Government also. The affidavits referred to and relied on, on behalf of the respondent do not disclose any explanation as to why the representation made by the petitioner was not forwarded to the Central Government or the appropriate authority of the State Government for due consideration. Under the circumstances, it has to be held that the constitutional imperative under Article 22(5) of the Constitution has been breached by the detaining authority which has rendered the impugned order illegal and the continued detention has also become illegal.

On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 13-5-1999 passed by the respondent no.1-District Magistrate, Rajkot against the petitioner is hereby quashed and set aside. The petitioner-detenu-Hareshbhai Govindbhai Makwana is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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